



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2004

Ms. Sheri Bryce Dye  
Assistant Criminal District Attorney  
Bexar County - Civil Section  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205-3030

OR2004-9581

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212624.

The Bexar County Sheriff's Office (the "sheriff") received a request for information pertaining to the proposed suspension of a named employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that the information at issue is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made by the sheriff's Professional Standards and Integrity Division. Therefore, as prescribed by section 552.022, the sheriff must release the submitted information unless it is confidential under other law or excepted under section 552.108. You argue that the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. However, these exceptions are discretionary exceptions under the Public Information Act (the "Act") and do not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 564 (1990) (governmental body may waive statutory predecessor to section 552.105). Accordingly, the sheriff may not withhold the submitted information under section 552.103 or section 552.111 of the Government Code.

You contend that the submitted information is excepted from disclosure under section 552.108. We note, however, that section 552.108 generally is not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, (Tex. App. 2002, no pet. h.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision Nos. 562 at 10 (1990), 350 at 3-4 (1982). In this instance, you state that release of the documents at issue "could harm a potential criminal investigation should [the complainant] proceed to filing criminal charges." However, you have failed to establish that the submitted documents relate to a criminal investigation. Based on your representations and our review, we determine that the investigation file at issue concerns an internal administrative investigation relating solely to a personnel matter, and we determine that the sheriff may not withhold the submitted under section 552.108.

You also raise section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You contend that the submitted information is excepted under section 552.101 in conjunction with the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. The submitted information pertains to allegations of misconduct by a sheriff's deputy, made by a civilian employee of the sheriff. Thus, we find that the information at issue is a matter of legitimate public interest. Furthermore, we find that the submitted information does not contain highly intimate and embarrassing facts about any person. *See* Open Records Decision Nos. 444 at 5-6 (1986)

(public has interest in public employee's qualifications and performance), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under statutory predecessor to section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under common-law right of privacy). We therefore determine the submitted information is not protected by common-law privacy and may not be withheld under section 552.101 on that basis.

You also seek to withhold video images of the deputy at issue pursuant to section 552.119 of the Government Code. Section 552.119 provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. In this instance, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of images of the deputy at issue would endanger the life or physical safety of the deputy. We therefore determine that the sheriff may not withhold any of the information at issue pursuant to section 552.119.

We note that the submitted information contains family member information and the home telephone number and of the deputy at issue. Section 552.117(a)(2) of the Government Code excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). The sheriff must therefore withhold the information we have marked in the submitted documents pursuant to section 552.117(a)(2).

In summary, we have marked information in the submitted documents that the sheriff must withhold pursuant to section 552.117(a)(2) of the Government Code. The remainder of the submitted information must be released to the requestor.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>1</sup> We note, however, that the submitted documents contain information that is confidential with respect to the general public. See Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the sheriff receives another request for this information, the sheriff must ask this office for a decision whether the information is subject to public disclosure.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 212624

Enc: Submitted documents

c: Ms. Rosa Rosales  
Executive Director  
National Association of Public Employees  
915 Guadalupe Street  
San Antonio, Texas 78207  
(w/o enclosures)